

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HAROLD SMITHERMAN,
Plaintiff,

v.

CIVIL ACTION NO.
17-11700-PBS

BRUCE GELB, et al.,
Defendants.

ORDER

November 26, 2018

Bowler, U.S.M.J.

For the reasons stated below, the Court orders that the plaintiff either pay the balance of the filing fee or file a new motion for leave to proceed in forma pauperis on or before December 19, 2018.

At the time pro se plaintiff Harold Smitherman commenced this action, he was incarcerated. When the Court granted his motion for leave to proceed in forma pauperis, the Court assessed an initial partial filing fee and required that the remainder of the \$350.00 fee be collected over time. (Docket Entry ## 6, 7). See 28 U.S.C. § 1915(b) (allowing indigent prisoner plaintiff to proceed without prepayment of the filing fee but requiring that the fee be paid in full over time through periodic withdrawals from plaintiff's prison account).

Smitherman was released from prison in January 2018. The Court's records indicate that he has paid \$92.56 of the \$350.00

filing fee, leaving a balance due of \$257.44. Smitherman remains obligated to pay the \$350.00 filing fee in full notwithstanding his release. If Smitherman is without income or assets to pay the balance in a lump sum, he may file a motion for leave to proceed in forma pauperis based on his current financial situation. See, e.g., McGann v. Comm'r of Social Sec. Admin., 96 F.3d 28, 30 (2d Cir. 1996) ("A released prisoner may litigate without further prepayment of fees upon satisfying the poverty affidavit requirement applicable to all non-prisoners."); see also DeBlasio v. Gilmore, 315 F.3d 396, 398 (4th Cir. 2003) (same, citing McGann).

Accordingly, if Smitherman wishes to prosecute this action, he must, no later than Wednesday, December 19, 2018, either (1) pay the \$257.44 balance of the filing fee; or (2) file a motion for leave to proceed in forma pauperis. Failure to comply with this order may result in dismissal of the action.

The Clerk shall provide Smitherman with an Application to Proceed in District Court without Prepaying Fees or Costs which, if completed, signed, and returned to the Court, will be treated as a motion for leave to proceed in forma pauperis.

SO ORDERED.

/s/ Marianne B. Bowler
MARIANNE B. BOWLER
United States Magistrate Judge